

Notice of Allowability

Application No.

09/986,613

Examiner

Maureen M. Wallenhorst

Applicant(s)

SATO, TOMOYA

Art Unit

1743

eb

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment received on December 3, 2003.
 2. ☒ The allowed claim(s) is/are 1, 3-4, 17-18, 5-6, 19, 7, 20, 22, 24, 8, 25-26, 29-30, 27-28, 31-33, 9, 11-12, 34-35, 13-14, 36, 15, 37, 39, 41, 16, 43-44, 48-49, 45-46, 50, 47, 51, 52-55 (renumbered 1-48).
 3. ☒ The drawings filed on 09 November 2001 are accepted by the Examiner.
 4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- * Certified copies not received: _____
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 - (a) ☐ The translation of the foreign language provisional application has been received.
 6. ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No. _____.
 - (b) ☐ including changes required by the proposed drawing correction filed _____, which has been approved by the Examiner.
 - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the margin according to 37 CFR 1.121(d).

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- 1 ☐ Notice of References Cited (PTO-892)
- 2 ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3 ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No. _____
- 4 ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
- 5 ☐ Notice of Informal Patent Application (PTO-152)
- 6 ☒ Interview Summary (PTO-413), Paper No. _____
- 7 ☒ Examiner's Amendment/Comment
- 8 ☒ Examiner's Statement of Reasons for Allowance
- 9 ☐ Other

Maureen M. Wallenhorst
Primary Examiner
Art Unit: 1743

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Todd Rands on January 5, 2004.

On line 10 of claim 1, the phrase ~~of the specimen~~ was inserted after the word "cells".

On line 11 of claim 8, the phrase "obtained with said spectral analysis means" was deleted. On line 12 of claim 8, the phrase ~~of the specimen~~ was inserted after the word "cells".

On line 2 of claim 9, the phrase ~~in combination with cells of a specimen~~ was inserted after the word "drug". On line 9 of claim 9, the phrase ~~of the specimen~~ was inserted after the word "cells".

On line 1 of claim 13, the phrase "or 10" was deleted.

On line 3 of claim 16, the phrase ~~in combination with cells of a specimen~~ was inserted after the word "drug". On line 9 of claim 16, the phrase "obtained with said spectral analysis means" was deleted. On line 10 of claim 16, the phrase ~~of the specimen~~ was inserted after the word "cells".

On line 2 of claims 22 and 24, the phrase "is virus" was deleted and replaced with the phrase ~~includes cells infected with a virus--~~.

On line 2 of claim 37, the phrase "virus is" was deleted and replaced with the phrase -- anti-viral agent is active against--.

On line 1 of claim 39, the numeral "38" was deleted and replaced with --9--so that claim 39 depends from claim 9. On line 2 of claim 39, the phrase "is virus" was deleted and replaced with the phrase --includes cells infected with a virus--.

On line 1 of claim 41, the numeral "40" was deleted and replaced with --9--so that claim 41 depends from claim 9. On line 2 of claim 41, the phrase "is virus" was deleted and replaced with the phrase --includes cells infected with a virus--.

Claim 42 was canceled.

On line 2 of claim 43, the phrase "a specimen" was changed to --said specimen--.

On line 2 of claims 45 and 47, the word "cells" was changed to the phrase --the cells of the specimen--.

On lines 7-8 of claim 52, the phrase "in accordance with the results of said spectral analysis" was deleted. On line 8 of claim 52, the phrase "said spectral analysis is an infrared spectral analysis" was changed to --wherein said specific region is an infrared region--. On line 13 of claim 52, the phrase --of the specimen--was inserted after the word "cells".

On lines 9-10 of claim 53, the phrase "in accordance with the results of the spectral analysis obtained with said spectral analysis means" was deleted. On lines 10-11 of claim 53, the phrase "said spectral analysis is an infrared spectral analysis" was changed to --wherein said specific region is an infrared region--. On line 16 of claim 53, the phrase --of the specimen--was inserted after the word "cells".

On line 2 of claim 54, the phrase --in combination with cells of a specimen--was inserted after the word "drug". On line 4 of claim 54, the phrase --, wherein said at least two wave numbers are--was inserted after the word "numbers". On line 8 of claim 54, the phrase "which are wave numbers" was changed to --and are wave numbers--. On line 9 of claim 54, the phrase --of the specimen--was inserted after the word "cells".

On line 3 of claim 55, the phrase -- in combination with cells of a specimen--was inserted after the word "drug". On line 5 of claim 55, the phrase --, wherein said at least two wave numbers are--was inserted after the word "numbers". On lines 8-9 of claim 55, the phrase "obtained with said spectral analysis means" was deleted. On line 9 of claim 55, the phrase "which are wave numbers" was changed to --and are wave numbers--. On line 10 of claim 55, the phrase --of the specimen--was inserted after the word "cells".

2. The following is an examiner's statement of reasons for allowance: Application serial no. 09/986,613 is being allowed since none of the prior art of record teaches or fairly suggests a method for determining a disease type or condition which comprises analyzing the absorption or emission spectrum in a specific infrared region for a sample of cells, and determining the disease type or condition by using as indices the appearance of spectra corresponding to at least two wave numbers, wherein the wave numbers are obtained by measuring an absorption or emission spectrum of cancer cells, bacteria or virus within the specific infrared region, and wherein the wave numbers either appear or disappear after death of the cells of the sample analyzed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue

Art Unit: 1743

fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maureen M. Wallenhorst whose telephone number is 571-272-1266. The examiner can normally be reached on Monday-Wednesday from 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden, can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Maureen M. Wallenhorst
Primary Examiner
Art Unit 1743

mmw

January 5, 2004

Maureen M. Wallenhorst
MAUREEN M. WALLENHORST
PRIMARY EXAMINER
GROUP 1700